



*Expires – upon issuance of the LPP*

## Evaluating and Submitting Good Faith Efforts

### I. BACKGROUND

In accordance with Chapter 9, “Civil Rights and Disadvantaged Business Enterprise,” of the Local Assistance Procedures Manual (LAPM), a Good Faith Effort (GFE) is required by a bidder (for the purpose of this policy, a bidder also refers to a proposer for consultant contracts) on a U.S. Department of Transportation assisted contract to meet the Underutilized Disadvantaged Business Enterprise (UDBE) contract goal. In the event the bidder does not meet the UDBE contract goal, the bidder must provide documentation in support of their adequate good faith efforts. The following are steps, although not exclusive or exhaustive, that a bidder should take and document in order to be awarded a contract on the basis of a GFE by a local agency:

- Solicit through all reasonable and available means the interest of all certified UDBE firms in the market area that are capable of performing the contract work.
- Provide sufficient time for the UDBE to respond to the solicitation and takes appropriate steps to follow up the initial solicitation to the UDBE.
- Select portions of the work to be performed by the UDBE, increasing the likelihood that the UDBE goal will be met.
- Provide interested UDBEs with information about the contract in a timely manner and assists them in responding to a solicitation.
- Negotiate in good faith with interested UDBEs.
- Not rejecting a UDBE as being unqualified without good reason.
- Assist UDBEs in obtaining bonding and lines of credit or insurance.
- Assist interested UDBEs in obtaining equipment, supplies, materials or related assistance or services.
- Use services of minority or women community organizations or groups.

These steps are typically documented by the bidder on LAPM Exhibit 15-H, “UDBE Information – Good Faith Efforts,” which is to be included in the bid package. This information is used by the local agency to determine if the GFE was adequate or not prior to awarding the contract.

The National Review Team (NRT) Summary Report on the American Recovery & Reinvestment Act for California, dated February 2, 2010, contained the following two recommendations:

*#1 “The California Division (of the Federal Highway Administration) should encourage Caltrans (including its subrecipients) to consider the top three low bidders in the good faith effort process.*

*#5 “Caltrans should develop and disseminate specific guidelines and/or procedures to LPAs (Local Public Agencies) on reviewing and evaluating good faith efforts and monitor its implementation.”*

### II. POLICY

For projects **awarded on or after May 1, 2011**, local agencies must prepare and submit with the award package an Evaluation of Good Faith Effort Memorandum (see sample Memorandum attached) that cites reasons as to why the GFE is adequate or not. In addition, the LAPM Exhibit 15-H, without supporting documentation, should be included in the award package. Note that Exhibit 15-H and the Evaluation of Good Faith Effort Memorandum need not be submitted with



the award package, if the Low Bidder has met the UDBE goal. However, bidders should be encouraged to submit Exhibit 15-H with their bid package, even if they believe they have met the UDBE goal, in case errors are found in the 15-G1, “UDBE Commitment,” by the local agency.

In determining whether a bidder has made good faith efforts, in accordance with Chapter 9.9, “Good Faith Efforts,” of the LAPM, the local agency may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the UDBE contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average UDBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

### III. PROCEDURE

The local agency will evaluate GFEs considering the commitment of the second and third bidders and ensure that the following is included in the contract special provisions:

*The Agency may consider the UDBE commitments of the 2nd and 3rd bidders when determining whether the low bidder made good faith efforts to meet the UDBE goal.*

This language has been included in the Sample Notice to Bidders and Special Provisions boilerplate located on the Caltrans Division of Local Assistance website at [http://www.dot.ca.gov/hq/LocalPrograms/sam\\_boil/sam\\_boil.htm](http://www.dot.ca.gov/hq/LocalPrograms/sam_boil/sam_boil.htm).

For projects **awarded on or after May 1, 2011**, the local agency will be required to include the Exhibit 15-H, and an Evaluation of Good Faith Effort Memorandum (Attachment A), in the award package for all projects that are awarded on the basis of a GFE. The District Local Assistance Engineer will review the award package to ensure the GFE, Exhibit 15-H, and an Evaluation of Good Faith Effort Memorandum (Attachment A) are included.

### IV. APPLICABILITY/IMPACTS

This Office Bulletin applies to all federal-aid local assistance transportation projects.

Recommended:	<u>Original Signed By</u>	<u>3/15/2011</u>
	Henry Wells, Committee Chair	Date
Approved:	<u>Original Signed By</u>	<u>3/15/2011</u>
	Mohsen Sultan, Chief	
	Office of Policy Development and Quality Assurance	Date

Attachment: Sample Evaluation of Good Faith Effort Memorandum